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REDACTED - FOR PUBLIC INSPECTION

February 22, 2000

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W. - Suite TW-A325  
Washington, D.C. 20554

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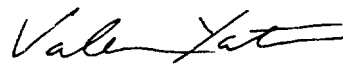
Re: Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas, CC Docket No. 00-04

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are one original confidential portion and one original and two paper copies and one diskette copy of the entire redacted version of the Reply Comments of NorthPoint Communications, Inc. Also included are five copies of the redacted version of the submission for distribution to the Commissioners.

Please date stamp the additional copy provided herewith for that purpose and return the same to the bearer. Thank you for your assistance.

Sincerely,



Valerie Yates

Enclosures

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
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Application by SBC Communications Inc., )  
Southwestern Bell Telephone Company, and )  
Southwestern Bell Communications ) CC Docket 00-4  
Services, Inc. d/b/a/ Southwestern Bell Long )  
Distance, for Provision of In-Region )  
InterLATA Services in Texas )

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**Reply Comments of  
NorthPoint Communications, Inc.**

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Dated: February 22, 2000

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## SUMMARY

Southwestern Bell Telephone Company's ("SWBT's") application for long-distance authority, coming as it does before most of the essential requirements developed by the Texas PUC to ensure open competition in Texas have been executed, is premature. Several carriers and the Department of Justice corroborate NorthPoint's concerns, stated in its opening comments, that SWBT's performance measurement data is fundamentally flawed. Telcordia's testing was too limited to reflect meaningfully upon the experience of DSL competitive LECs and the performance data submitted by SWBT has proven to be inaccurate. Without presenting reliable performance data in its application, SWBT is asking the Commission to take its word that it has satisfied its obligations under the Telecommunications Act. In light of the large impact the Commission's approval would have on competition in Texas, and the precedent such an approval sets for future applications, the Commission must not ignore the total failure of SWBT to provide credible and reliable performance data to support its application.

The performance data that SWBT has submitted with regard to DSL-capable loop ordering and provisioning wholly fails to reflect the experience of DSL CLECs in ordering and provisioning loops in Texas. For example, the Telcordia test submitted in support of its application merely tested interim, manual DSL loop ordering processes and does not present an accurate picture of DSL in Texas today. Further, the performance measurement data for DSL orders submitted by SWBT in support of its application is manifestly unreliable; it is internally inconsistent as well as inconsistent with the data presented by DSL CLECs. Because SWBT has failed to meet *its burden* to demonstrate section 271 compliance, its application must be rejected as incomplete.

NorthPoint is also concerned about SWBT's attempt to bridge the compliance gap with "paper promises" to achieve compliance with the market-opening requirements of the Act in the future. SWBT's actual performance fails to demonstrate nondiscriminatory treatment of competitive LECs. With respect to the provision of DSL-capable loops, the record contains numerous examples of gaps where SWBT has failed to make its *prima facie* case that it has satisfied the requirements of section 271 of the Act. The Texas PUC excuses the many deficiencies in SWBT's application based on promised changes and other commitments affecting the DSL preordering, ordering and provisioning processes, as well as the performance measurements themselves. The framework on which the Texas PUC relies and under which competitive LECs and SWBT will operate with respect to the provision of DSL loops was not subject to third-party testing, is not reflected in the performance data submitted, and will not have been executed until long after SWBT's application was filed. For these reasons, NorthPoint believes that SWBT's application was premature and urges the Commission to deny the application until more reliable performance measure data can be gathered and analyzed.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Southwestern Bell Telephone Company,	)	
and Southwestern Bell Communications	)	CC Docket 00-4
Services, Inc. d/b/a/ Southwestern Bell	)	
Long Distance, for Provision of In-Region	)	
InterLATA Services in Texas	)	
	)	

**Reply Comments of NorthPoint Communications, Inc.**

**I. Introduction**

NorthPoint Communications, Inc. (“NorthPoint”) recognizes the extensive and ongoing efforts of the Texas Public Utilities Commission (“Texas PUC”) to bring Southwestern Bell Telephone Company (“SWBT”) into compliance with the requirements of section 271 of the Communications Act of 1934.<sup>1</sup> At this time, however, NorthPoint cannot agree with the Texas PUC’s conclusion that SWBT’s performance with respect to the provision of DSL loops is sufficient to meet the statutory requirements,<sup>2</sup> based in large part on the fundamental flaws with SWBT’s performance data exposed by initial comments on the application and validated by the Department of Justice. Further, NorthPoint’s own experience with DSL loop ordering and provisioning in Texas suggest that SWBT has not yet met its obligations.

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<sup>1</sup> Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56, amending the Communications Act of 1934, codified at 47 U.S.C. § 151 *et seq* at §271.

<sup>2</sup> Evaluation of the Public Utility Commission of Texas (“TX PUC Evaluation”) at p. 1.

The Texas PUC overlooks or explains away inconsistencies or gaps in the performance data and supports SWBT's application based on promises and commitments regarding future performance. It is well-established, however, that "a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry."<sup>3</sup> It is in the execution of the requirements, rules and commitments that markets are opened. SWBT's current application, coming as it does before the execution of most of the key requirements imposed by the Texas PUC to ensure competition – particularly for DSL carriers – simply is premature. At the time its application was filed, SWBT did not and, to this date, cannot demonstrate that it has fully complied with the market-opening requirements of the Act.

This Commission should move forward to order a new third party test, which will generate reliable and credible performance data. NorthPoint is confident that such a test could be short (perhaps no more than two months) and focused. If this test produces results that validate SWBT's claims of nondiscriminatory policies and performance, SWBT should refile its application and this Commission should move quickly to approve it. Without this new data, the Commission would be reckless to grant SWBT authority to provide long distance service in Texas.

## **II. SWBT Fails to Establish *Prima Facie* Case**

To support its conclusion that SWBT has met its 271 obligations, the Texas PUC relies on its early work on the Telcordia OSS Test<sup>4</sup> and SWBT's performance measurement data.<sup>5</sup>

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<sup>3</sup> See, e.g., BA-NY 271 Order at para. 37.

<sup>4</sup> See Telcordia's Final OSS Readiness Report, Application of Southwestern Bell Telephone Company, App. D Vol. 7 (Oct. 7, 1999) ("Telcordia Report").

<sup>5</sup> See PUC's Evaluation of SWBT Performance Measure Data, Application of Southwestern Bell Telephone Company, App. C, Vol. 135 (Nov. 2, 1999).

With respect to the provision of DSL-capable loops, however, the record contains numerous examples of gaps where SWBT has failed to make its *prima facie* case that it has satisfied the requirements of section 271 of the Act.<sup>6</sup> As the Department of Justice has concluded, Telcordia's testing was too limited to reflect meaningfully upon the experience of DSL competitive LECs,<sup>7</sup> the performance data submitted by SWBT has proven to be inaccurate,<sup>8</sup> and SWBT's performance fails to demonstrate nondiscriminatory treatment to competitors.<sup>9</sup>

In November 1999, the Texas PUC worked with the DSL competitive LECs in Texas and with SWBT to reconcile performance data for the new DSL-capable loop ordering process.<sup>10</sup> In its Evaluation, the Texas PUC states that this data "revealed that SWBT's performance was in

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<sup>6</sup> See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, *Memorandum Opinion and Order*, CC Docket No. 99-295, FCC 99-404 (rel. Dec. 22, 1999) ("BA-NY 271 Order") at para. 49.

<sup>7</sup> See Evaluation of the Department of Justice ("DOJ Evaluation") at pp. 4-7 ("Telcordia's test has significant limitations") and p. 7 ("Telcordia's test in Texas was far less comprehensive, blind and independent and therefore provides much less persuasive evidence.").

<sup>8</sup> See, e.g., DOJ Evaluation at p. 12 ("As a critical threshold matter, it appears that key portions of the DSL performance data that SBC has submitted to the Commission are seriously flawed.") See also *id.* at p. 11 ("SBC's performance data are fundamentally flawed in some cases, and in other cases reveal significant discrimination.") In response to NorthPoint's observation that SWBT submitted flawed data for Performance Measurement, on February 1, 2000, SWBT submitted revised aggregate statewide data. On February 14, 2000, SWBT provided NorthPoint with NorthPoint-specific data. These data show 332 completed DSL-capable loops for November and December 1999. This figure contradicts SWBT's own data for Performance Measurement 58, which shows approximately 450 completed DSL loops for this same time period. It is NorthPoint's policy to request loop installation intervals within the standard interval on every loop order so few of NorthPoint's orders should have been excluded as being requested outside the interval. It appears that the data submitted for at least one of these measurements is incorrect.

<sup>9</sup> DOJ Evaluation at p. 18-23 ("Even with the limited data available, the performance reports demonstrate that SBC is failing to provide non discriminatory performance . . ."); TX PUC Evaluation at p. 64-65.

<sup>10</sup> Texas PUC at p. 63.



compliance with the checklist requirements.”<sup>11</sup> It is unclear how the Texas PUC could have reached its conclusion that SWBT met its obligations.

Moreover, based on NorthPoint’s participation in that reconciliation process and the problems that NorthPoint brought to the Texas PUC’s attention at that time, we believe that SWBT’s performance data do not tell the entire story. Specifically, with respect to the NorthPoint orders reviewed by the Texas PUC, few of the loops had been installed at the time of the review, most loop orders were rejected multiple times, the loop makeup interval could not be measured, and NorthPoint’s orders were being rejected based on discriminatory and invalid product criteria, such as loop length.<sup>12</sup>

The Texas PUC states that its OSS testing objectives were designed to “assess the operational readiness” of SWBT’s OSS to handle “commercial volumes.”<sup>13</sup> Telcordia itself acknowledges the minimal amounts of DSL orders it had available for testing.<sup>14</sup> As the Department of Justice observed, “Telcordia’s review does not provide an adequate basis for determining that presently reported SBC performance data are reliable.”<sup>15</sup> Further, the Texas PUC notes the small amount of DSL loops included in Performance Measurement 55.1 (which

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<sup>11</sup> *Id.*

<sup>12</sup> At the request of the Texas PUC, NorthPoint manually tracked the loop orders it submitted in late October, when LEX capability for DSL loop ordering first became available. NorthPoint and SWBT then reconciled the data to come to an agreement on the disposition of each order. The reconciled data are shown in the spreadsheet included as Appendix of this submission.

<sup>13</sup> TX PUC Evaluation at p. 28.

<sup>14</sup> Telcordia Report at p. 76.

<sup>15</sup> DOJ Evaluation at p. 6 (“First, Telcordia did not examine whether the metrics as defined are meaningful. Second, its review is too dated and limited to ensure the accuracy of current data.”)

measures the average installation interval for DSL loops).<sup>16</sup> SWBT has neither tested nor submitted performance measurements sufficient to demonstrate meeting commercial volumes.<sup>17</sup>

We also note deficiencies in Performance Measurement 55.1 insofar as it shows only average installation intervals. SWBT's contractual obligation is to provide 100 percent of its orders within the agreed upon time periods. Showing an average installation interval does not reflect whether SWBT is meeting its contractual obligation because it does not show what percentage of orders SWBT provides within the agreed upon time period.

Other performance measurements must be analyzed carefully. Although the Texas PUC states that, with respect to PM-13 (which measures the percent of orders or LSRs, from entry to distribution, that progress without manual intervention through SWBT's ordering systems), "the results speak for themselves,"<sup>18</sup> it is important to keep in mind that DSL orders are not captured in this measurement because almost every single DSL loop order is designed to fall out for

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<sup>16</sup> The Texas PUC states that the data points were limited because "the majority of the due dates fall beyond the standard interval." Texas PUC Evaluation at page 64. It is difficult to understand how this explanation could be accurate. Except in very rare circumstances, NorthPoint's policy is to request the standard interval. See Covad Comments at pp. 29-31, DOJ Evaluation at p. 16.

<sup>17</sup> On the issue of current volumes of DSL in Texas, NorthPoint provides the following clarification. In its Comments, NorthPoint states that it had ordered approximately 1000 DSL capable loops in Texas as of December 31, 1999. NorthPoint Comments at 2, 9, Lewandowski Aff. at ¶5. After further discussions with SWBT, NorthPoint must correct its comments to state that this number includes orders for both DSL capable loops and ISDN loops for October to December 1999. As discussed in our Comments, prior to SWBT's offering of DSL capable loops, NorthPoint had been ordering ISDN loops and continues to order ISDN loops for its IDSL product when a customer is served by fiber. Therefore, the statement in the Lewandowski Aff. at ¶32 that 20% of NorthPoint's loop orders for 1999 remained outstanding as of the filing includes both ISDN and DSL capable loops. With this clarification, SWBT and NorthPoint are in very close agreement on the total number of loops *completed* for NorthPoint in Texas. Even using SWBT's numbers for DSL loops completed in 1999, however, 40% of NorthPoint's DSL loop orders *submitted* in 1999 (over 700 orders) remained outstanding at the end of the year.

<sup>18</sup> TX PUC Evaluation at p. 40.

manual intervention.<sup>19</sup> Similarly, the Commission should not rely on PM-57 (which measures the interval for returning loop make-up information) since the data submitted by SWBT shows only the time its representative actually worked on the request, but not the total amount of time the request was with SWBT before and after the work was completed.<sup>20</sup>

The Texas PUC itself determined that the interval being measured under PM-57 should be changed to better document the experience of competitive LECs.<sup>21</sup> The change in this measurement was not reflected in the performance data SWBT submitted with its application, nor was it incorporated in the revised performance data submitted by SWBT on February 1, 2000.<sup>22</sup> For this reason, NorthPoint agrees with the assessment of the Department of Justice: “Given this flaw in the data, they cannot be relied upon to show parity in this dimension of performance.”<sup>23</sup>

### **III. The Commission Must Not Rely on SWBT’s Promises of Future Performance**

NorthPoint agrees with the Department of Justice’s conclusion that “in the critical area of providing unbundled loops for advanced services . . . SBC’s application is clearly deficient.”<sup>24</sup> The Texas PUC excuses SWBT’s failure to demonstrate compliance with the requirements of section 271 on the basis that that SWBT has agreed to “several enhancements and modifications

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<sup>19</sup> See NorthPoint Comments, Lewandowski Aff. at ¶24.

<sup>20</sup> See DOJ Evaluation at pp. 12-13.

<sup>21</sup> See TX PUC Evaluation at p. 64 (“In addition, modifications and clarifications were made [as of December 16, 1999] to the way current xDSL performance measurements work: (1) the interval for returning loop makeup information will start when the LSC receives the request via fax or email and will end when the LSC returns the information via fax or email.”) See also Chapman Aff. ¶6.

<sup>22</sup> See DOJ Evaluation at p. 13 and accompanying footnote.

<sup>23</sup> DOJ Evaluation at p. 13.

<sup>24</sup> DOJ Evaluation at p. 2.

to its DSL preordering, ordering and provisioning processes”<sup>25</sup> that will be assured through the establishment of “heightened performance guarantees.”<sup>26</sup> These commitments are documented in the Texas 271 Agreement,<sup>27</sup> the SBC / Ameritech Merger Conditions and Plan of Record,<sup>28</sup> SWBT’s Memorandum of Understanding,<sup>29</sup> and the Texas Commission’s ultimate decision on two arbitration proceedings.<sup>30</sup> In fact, the Texas PUC observes that “the rulings and outcomes” of two xDSL arbitration proceedings “will be the ultimate overriding standard applicable to the provision of xDSL capable loops and service for all providers in Texas.”<sup>31</sup> NorthPoint believes the Texas PUC’s work in developing many of these crucial legal obligations goes a long way towards ensuring open competition in Texas. For the purpose of SWBT’s 271 application,

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<sup>25</sup> TX PUC Evaluation at p. 4

<sup>26</sup> TX PUC Evaluation at p. 4.

<sup>27</sup> Investigation of Southwestern Bell Telephone Company’s Entry into the Texas InterLATA Telecommunications Market, Project No. 16251, Order No. 55, Approving the Texas 271 Agreement (Oct. 13, 1999) (“T2A”). See TX PUC Evaluation at p. 32.

<sup>28</sup> Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules, *Memorandum Opinion and Order*, CC Docket No. 98-141, FCC 99-279 (rel. Oct. 8, 1999), *app. pend. sub. nom. Telecommunications Resellers Ass’n v. FCC*, Case No. 99-1441 (D.C. Cir.) at Appendix C (“Merger Conditions”). In accordance with paragraph 15(c) of the Merger Conditions, SBC disseminated its OSS Plan of Record for Pre-ordering and Ordering of xDSL and other Advanced Services on December 7, 1999 (“Plan of Record”). See SWBT Accessible Letter, CLEC 99-183 (Dec. 7, 1999).

<sup>29</sup> Investigation of Southwestern Bell Telephone Company’s Entry into the Texas InterLATA Telecommunications Market, Project No. 16251, *Southwestern Bell Telephone Company Memorandum of Understanding* (Apr. 26, 1999).

<sup>30</sup> See Petition of Accelerated Connection, Inc. d/b/a ACI Corp. for Arbitration to Establish and Interconnection Agreement with Southwestern Bell Telephone Company, Docket No. 20226, and Petition of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company, Docket No. 20272. The arbitration awards were issued on November 30, 1999.

<sup>31</sup> TX PUC Evaluation at p. 62.

however, NorthPoint is concerned about the Texas PUC's reliance on the "paper promises" contained within these documents.

The arbitration awards, for example, were issued November 30, 1999. The Texas PUC approved the first interconnection agreements based on the arbitration awards January 27, 2000.<sup>32</sup> The results of the arbitration will substantially change the preordering, ordering and provisioning processes for DSL loops. This means that the framework on which the Texas PUC relies and under which competitive LECs and SWBT will operate with respect to the provision of DSL loops was not subject to third-party testing, is not reflected in the performance data submitted, and had not been executed until after SWBT's application was filed.

Similarly, the Texas PUC excuses SWBT's failure to provide nondiscriminatory access to its OSS because SWBT commits to provide nondiscriminatory access at a future date. The Texas PUC acknowledges that, with respect to "DSL loop pre-qualification, SWBT provides loop make-up information as a pre-order function on a *manual* basis."<sup>33</sup> Manual processes, even the current semi-mechanized LEX process, cannot scale to meet commercial volumes. The Commission has already recognized that manual processes are "more prone to error than orders that are processed automatically."<sup>34</sup> Moreover, because SWBT itself has implemented true "flow through" capability for ADSL orders, which was provided almost exclusively by SWBT until very recently, SWBT fails to satisfy the requirement to provide nondiscriminatory access to its OSS.<sup>35</sup>

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<sup>32</sup> TX PUC Evaluation at n. 323.

<sup>33</sup> TX PUC Evaluation at p. 33 (emphasis added).

<sup>34</sup> BA-NY 271 Order at para. 171.

<sup>35</sup> See Ham Aff. at ¶¶ 126, 215.

The Texas PUC nevertheless endorses SWBT's application because "as part of the Ameritech merger conditions, SWBT is developing enhancements for mechanized loop qualification" and "SWBT is obligated to conform its mechanized pre-ordering functionality to the Texas Commission's arbitration decision that addresses electronic access to DSL loop make-up information."<sup>36</sup> This implies that a commitment to provide nondiscriminatory access is sufficient to satisfy the statutory requirements. The period between the promise and performance, however, can be considerable. Although, in the Plan of Record, SBC commits to including all DSL-capable loops under 12,000 feet as flow through, SBC has recently indicated that it will not implement this promise until July 2000.<sup>37</sup> In addition, under the original Plan of Record, mechanized loop qualification data necessary for DSL orders will not be available until December 2000.<sup>38</sup> NorthPoint does not mean to suggest that SWBT is dragging its feet to implement these changes and accepts that these dates are realistic. NorthPoint emphatically believes, however, that the Commission should not grant SWBT 271 authority until SWBT can demonstrate that it is providing nondiscriminatory access to OSS, in accordance with the statutory requirements.

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<sup>36</sup> TX PUC Evaluation at p. 33.

<sup>37</sup> Addendum to OSS Plan of Record at p. 2.

<sup>38</sup> SWBT Accessible Letter, CLEC 99-183 (Dec. 7, 1999) at p. 18. SWBT has subsequently revised its position in Texas to commit to providing access to some actual loop data by April 29, 2000. See Addendum to OSS Plan of Record for Pre-Ordering and Ordering of xDSL and Other Advanced Services at p. 2. The requirement to provide access to the underlying loop qualification information will become effective 120 days after publication in the Federal Register of the rules established in the UNE Remand Order. See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) ("UNE Remand Order") at para. 526. We note that the Commission has already found that the database currently used by SWBT to provide loop qualification information would fail to satisfy the nondiscrimination requirement because it "indicates only whether a loop falls into a 'green, yellow or red' category" and does not provide access to the underlying loop information. See *id.* at para. 428.

*Open-Ended Commitments for Future Performance.* In some cases, the Texas PUC relies upon SWBT's general agreement to conform its practices so as to provide nondiscriminatory access to competitive LECs without requiring an explicit commitment concerning the specific time period in which that change will occur. For example, with respect to service order transactions, SWBT merely promises that "in areas where service order transactions cannot be provided via an electronic interface for the pre-order, ordering and provisioning processes, SWBT and competitive LECs will develop manual work around processes until such time as the transactions can be electronically transmitted."<sup>39</sup> This completely open-ended commitment means that, for the foreseeable future, NorthPoint's orders will be reviewed and retyped by SWBT's service representatives, with the inevitable delay and errors intrinsic to a manual process.

*Expectations of Future Performance.* In other areas, the Texas PUC simply asserts its expectation that SWBT's future performance will be better than the performance demonstrated in the months leading up to the filing of its application. For example, the Texas PUC acknowledges that SWBT's performance under PM-5 with respect to the provision of UNE loops via mechanized EDI declined in the period immediately preceding the application, noting that SWBT actually failed to meet the benchmark during the months of October and November.<sup>40</sup> The Texas PUC concludes that a "systemic problem" does not exist because the largest volume of orders occurred in August.<sup>41</sup> Similarly, the Texas PUC reports that SWBT failed to meet the benchmark established for manual UNE loops, but concludes again that this failure does not

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<sup>39</sup> TX PUC Evaluation at p. 37.

<sup>40</sup> TX PUC Evaluation at p. 39.

<sup>41</sup> TX PUC Evaluation at p. 39.

represent a “systemic problem” because the number of manual orders declined over the testing period.<sup>42</sup>

The Texas PUC does not argue that the decline in volume meant the performance data included too few data points to be considered reliable. Instead, the Texas PUC excuses SWBT’s inadequate performance on the basis that the volume of orders had declined in that period. If anything, a decline in volume should have enabled SWBT to outperform the benchmark. The Texas PUC’s analysis stands in direct contrast to the Commission’s analysis in the Bell Atlantic – New York 271 proceeding. In that proceeding, the Commission excused Bell Atlantic’s performance with respect to DSL because the volume of orders had significantly *increased* in the period immediately preceding the filing of the application.<sup>43</sup>

Moreover, competitive LECs did not begin ordering DSL-capable loops until September 1999 and their orders have increased over the last few months of 1999. For SWBT’s performance to decline in that same period requires, at a minimum, an analysis of the impact of that performance on the ability of competitive LECs to have access to DSL loops. The Texas PUC observes that, as a result of the process it initiated to reconcile SWBT’s and the DSL competitive LECs’ data, SWBT made several promises for process and performance measurement improvements.<sup>44</sup> SWBT made these promises less than one month before it filed its 271 application. Neither the Texas PUC, nor this Commission can judge whether SWBT has met its obligations based on less than one month’s worth of data..

Similarly, the Texas PUC’s reliance on expectations of SWBT’s future performance can be seen in its analysis of SBC’s advanced services separate affiliate. The Texas PUC asserts that

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<sup>42</sup> TX PUC Evaluation at p. 40.

<sup>43</sup> See BA-NY 271 Order at paras. 320-322.

<sup>44</sup> *Id.* See also, NorthPoint Comments, Lewandowski Aff. Attachment 1.



“further assurance of nondiscriminatory access to xDSL-capable loops” can be found in the establishment of SBC’s advanced services separate affiliate, Advanced Solutions Inc (“ASI”).<sup>45</sup> As discussed in NorthPoint’s comments,<sup>46</sup> the Department of Justice’s evaluation,<sup>47</sup> and comments submitted by other parties,<sup>48</sup> this separate affiliate only began to provide service in Texas in February 2000, so it cannot be used to demonstrate SWBT’s compliance at the time its application was filed. Moreover, several DSL competitive LECs have filed protests, including before the Texas PUC, regarding the terms of interconnection agreement which governs the relationship between SBC and the affiliate.<sup>49</sup> These protests specifically concern whether SWBT provides competitive LECs nondiscriminatory treatment relative to ASI. NorthPoint agrees with the conclusion reached by the Department of Justice: “SBC has not demonstrated that it is providing non-discriminatory treatment to competitors offering xDSL services, or that its planned (but not implemented) use of a separate affiliate to provide such service will address this shortcoming.”<sup>50</sup>

Over the past several months, NorthPoint and SWBT have conducted weekly meetings to resolve problems with access to DSL loops. Most recently, NorthPoint met with SWBT in San

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<sup>45</sup> TX PUC Evaluation at p. 60.

<sup>46</sup> NorthPoint Comments at pp. 6-7.

<sup>47</sup> DOJ Evaluation at pp. 26-27.

<sup>48</sup> *See, e.g.* AT&T Comments at p. 23, COVAD Comments at p. 52

<sup>49</sup> Joint Application of Southwestern Bell Telephone Company and SBC Advanced Solutions, Inc. for Approval of Interconnection Agreement Under PURA and the Telecommunications Act of 1996, Public Utility Commission of Texas, Docket No. 21481, *Exceptions of Rhythms Links, Inc., NorthPoint Communications, and Covad Communications Company to Proposed Order Approving Interconnection Agreement* (filed Dec. 7, 1999) (urging the Texas PUC to reject the proposed Interconnection Agreement because “there are numerous substantive aspects of the relationship between SWBT and SBC ASI that are not encompassed or addressed in the Agreement.”)

<sup>50</sup> DOJ Evaluation at p. 2.

Francisco to discuss the issues raised in NorthPoint's January 18 letter to SWBT<sup>51</sup> and in the comments NorthPoint filed in this proceeding. Both carriers sent several representatives to the meeting. At the meeting, NorthPoint and SWBT discussed and clarified many of the gaps in the ordering and provisioning systems and processes and reviewed SWBT's previous process commitments to determine status. SWBT committed to solving the provisioning problems NorthPoint has identified.

NorthPoint is encouraged by the agreements reached at the San Francisco meeting. Both companies took away action items from the meeting that will help to address NorthPoint's concerns. Unfortunately, neither company could identify a misunderstanding or miscommunication that could easily explain NorthPoint's problems with DSL ordering or provisioning. Neither company could suggest a "quick fix," either interim or permanent, that would allow SWBT to satisfy its 271 obligations for advanced services. On the contrary, during the meeting NorthPoint reiterated its concerns that many of the interim solutions recently put in place by SWBT are largely manual and could not scale for commercial volumes. Additionally, for many of NorthPoint's concerns, such as missed intervals for loop qualification information, increased accuracy of loop makeup information, singling out of ADSL loops as eligible for flow through, missed installation dates and incomplete jeopardy notices, SWBT could only promise a long term solution several months from now or a commitment to look into the issue. Nevertheless, NorthPoint is hopeful that increased communication between the two companies will lead, eventually, to resolution of the problems faced by DSL competitive LECs. NorthPoint reiterates its continuing commitment to working with SWBT to address these issues.

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<sup>51</sup> See Letter from Jessica Lewandowski, NorthPoint, to Clarence Johnson, SWBT, dated Jan. 18, 2000 (included in NorthPoint Comments, Lewandowski Affidavit, at Attachment 1.)

#### **IV. Conclusion**

NorthPoint supports the many changes to SWBT's processes and policies that the Texas PUC has required, and SWBT has committed to implement, in the extensive and ongoing efforts to ensure that competitive LECs have a meaningful opportunity to compete in Texas. These changes are necessary to ensure that SWBT satisfies its statutory obligation to provide nondiscriminatory access to xDSL-capable unbundled loops. SWBT has not yet met its checklist obligation for access to unbundled loops.

As discussed above, the Commission must not grant SWBT 271 authority based on incomplete and inaccurate performance data and a promise to improve the process, or even good faith incremental steps towards improving the process. It is well-established that "a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry."<sup>52</sup> NorthPoint will continue to work with SWBT until it meets this threshold and, at that time, will enthusiastically recommend SWBT for long distance authority. Further, NorthPoint suggests that a short but focused third party test should be conducted to generate reliable performance data upon which the Commission can confidently base its conclusions.

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<sup>52</sup> See, e.g., BA-NY 271 Order at para. 37.

For the reasons set forth above, NorthPoint believes that SWBT's application was premature and urges the Commission to deny the application.

Respectfully Submitted,



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Dated: February 22, 2000

## **APPENDIX A**

CONFIDENTIAL – NOT FOR PUBLIC INSPECTION

**CERTIFICATE OF SERVICE**

I, Valerie Yates, do hereby certify that on this day of February 22, 2000, I caused a copy of the foregoing Reply Comments of NorthPoint Communications, Inc. to be served upon each of the parties listed on the attached Service List.

  
\_\_\_\_\_  
Valerie Yates

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InterLATA Services Application - Texas (CC 00-4)  
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